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September 14, 1994

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

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SEP 14 1994  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Billed Party Preference for 0+ InterLATA Calls, CC Docket 92-  
*Further Notice of Proposed Rule Making*

Dear Mr. Caton:

Enclosed for filing please find an original and nine copies of Cleartel Communications, Inc's Reply Comments in the above referenced proceeding.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Regina A. LaCroix  
Director of Regulatory Affairs

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September, 1994, copies of Reply Comments of Cleartel Communications, Inc. were hand-delivered to the following:

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Tariff Division  
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Washington, D.C. 20554

  
Regina A. LaCroix

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Billed Party Preference	)	CC Docket No. 92-77
for 0+ InterLATA Calls	)	
	)	
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REPLY COMMENTS OF  
CLEARTEL COMMUNICATIONS, INC.

Regina A. LaCroix  
Director of Regulatory Affairs  
Cleartel Communications, Inc.  
1232 22nd Street, N.W.  
Washington, D.C. 20037

September 14, 1994

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of	)	
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Billed Party Preference	)	CC Docket No. 92-77
for 0+ InterLATA Calls	)	
	)	
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**REPLY COMMENTS OF  
CLEARTEL COMMUNICATIONS, INC.**

Cleartel Communications, Inc. ("Cleartel") hereby submits its reply comments in response to the Federal Communications Commission's ("Commission" or "FCC") Further Notice of Proposed Rule Making ("FNPRM") in the above-referenced Billed Party Preference ("BPP") proceeding.<sup>1</sup>

**I. SUMMARY**

Throughout this proceeding, including in the FNPRM stage, the majority of commenters on BPP have implored the Commission not to enact BPP. Though the Commission has concluded that it "will mandate BPP if [it] concludes that, as indicated by the current record, its benefits outweigh its costs and that these benefits cannot be achieved through alternative, less costly measures,"<sup>2</sup> the FCC appears to be ignoring the facts presented by the majority of carrier commenters. In the initial stages of this proceeding, these industry participants stated that the costs associated with

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<sup>1</sup> FCC 94-117 (released June 6, 1994).

<sup>2</sup> FNPRM at ¶ 2.

BPP implementation were enormous when compared to the benefits thereof. This same conviction was echoed in the majority of comments on the FNPRM. Furthermore, the consumer benefits sought by the FCC - to ensure 0 dialed calls are handled by a consumer's preferred carrier, to increase competition among carriers, and to refocus OSP competitive efforts on end users - are easily attainable through the Operator Consumer Services Improvement Act ("TOCSIA") and FCC rules and regulations. Clearly, the FCC's test to determine "alternative, less costly measures" has been met and the FCC should refocus its efforts on enforcing those regulations currently in place.

## **II. FLAWS IN FCC'S COST ANALYSIS**

The FCC's BPP cost/benefit analysis - the cornerstone of its BPP investigation - is fatally flawed from its inception. Even BPP proponents admit that the FCC has not properly calculated all the costs involved in BPP implementation. Specifically, these carriers acknowledge that cost estimates will vary significantly according to how BPP would be implemented, i.e., whether 14-digit screening will be required<sup>3</sup> and whether full balloting will be required. For example, Southwestern Bell, has recently taken the position that if certain conditions are not met by the FCC in its implementation of BPP, Southwestern Bell opposes BPP. This demonstrates that the economic costs and dislocations which will attend adoption of BPP are both significant and speculative.

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<sup>3</sup> Pacific Bell and Nevada Bell Comments, p. 5.

It is crucial to recognize that the real winners of BPP implementation will be the largest and most well-known IXC's and LEC's, who can be expected to gain significant increases in market share from the inequities created by BPP. It is highly speculative that consumers will benefit as the Commission envisions - it is more likely that consumers will face a plethora of new and innovative charges devised by the industry to recoup revenues stripped away by BPP.

### **III. FLAWS IN BPP PROPONENTS' ARGUMENTS**

As a threshold issue, it should be recognized by the Commission that the BPP proponents are motivated by self-interest. Anticipating BPP implementation, these LEC's and IXC's wait like hungry cats to gobble up operator service traffic currently carried by both AT&T and the smaller and more-regional OSP's. It is critical that the Commission separate fact from speculation when determining whether to implement BPP.

The public interest arguments used by commenters wholly ignore the fact that there has been no input in this proceeding from consumer groups. Each commenter appears to have its own expert-prepared study which supports its theory that BPP is, or is not, in the best interests of the consumer. The Commission's public interest mandate requires the Commission to even-handedly weigh the options when considering new technologies, the associated costs which may be passed on to consumers, and subsequent impacts on the industry as a whole. BPP will result in the wholesale disruption of the operator service and payphone industries: it will affect

not only the industries, but also the many people employed therein. Additionally, when payphone providers experience reduced revenues, it is highly likely that they will seek to recoup that loss another way. Based on the economic realities of the telecommunications marketplace, BPP will succeed in merely reallocating the costs among the industry's players instead of providing true savings to consumers. The real public interest question for the Commission in this proceeding should be whether the marketplace can serve the public interest given the rules, regulations and legislation currently in effect. The Commission should enforce its own rules from the last rate inquiry and ensure that consumers benefit immediately, instead of implementing a technology that will not deliver material savings in the years to come.

The Commission's BPP proposal is extremely paternalistic. The Commission's BPP proposal ignores the substantial experience of the last several years and the educational efforts of IXCs (like Cleartel) who have taught their customers how to reach them from any phone on an access code basis. Access code call records available from all carriers repudiate the assertions of some commenters that consumers find dialing access codes confusing and inconvenient. As a matter of fact, two BPP proponents fundamentally disagree on the impact "dialing simplicity" will have on consumers. Ameritech believes that consumers are more interested in cost savings than dialing simplicity.<sup>4</sup> Sprint, on

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<sup>4</sup> Ameritech Comments, p. 8.

the other hand, contends that consumers would be willing to sacrifice "substantial savings" for dialing simplicity.<sup>5</sup> This disagreement regarding the FCC's basic, but unsupported, tenet of BPP illustrates how fundamentally flawed BPP really is.

MCI's and Sprint's argument that AT&T has an unwarranted advantage is not a new argument. Of course, MCI and Sprint want the 0+ subscriber base of their current 1+ customers - they also want the 0 dialed traffic currently transported by AT&T, their largest competitor and the largest OSP, and they want the traffic carried by smaller and more-regional IXCs, such as Cleartel. BPP would help them obtain both, particularly if the Commission agrees that simple customer notification, as opposed to full balloting, is sufficient for implementation.

Another argument relied upon by BPP proponents is that BPP implementation will reduce the number of consumer complaints at both the federal and state level. By all accounts, including data from the Commission itself, the number of consumer complaints regarding OSP rates and service have plummeted since the last FCC rate inquiry. BPP proponents' argument that BPP implementation will reduce the number of complaints is therefore outdated and should be viewed within its proper context.

#### **IV. TIMING CONCERNS**

If one of the Commission's goals is to control consumer price-gouging, a system like BPP, with its inherent networking

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<sup>5</sup> Sprint Comments at p. 8.



implementation delays, is not the best solution. BPP implementation has been estimated to take from eighteen months to three years after the issuance of an FCC order mandating BPP - and these figures assume certain technological configurations (10-digit screening instead of 14-digit, simple notification instead of full balloting and OSS7 to the tandem switch level instead of to the end office level). If BPP is adopted, it is likely that the appeals process will add significantly to even the shortest estimate. The Commission would be better focused if it considered setting target rates to protect consumers.

**V. NECESSARY SAFEGUARDS IN THE EVENT THAT BPP IS ERRONEOUSLY IMPLEMENTED**

Cleartel strongly recommends that the Commission not adopt BPP. If the Commission nevertheless chooses to implement BPP, it should ensure that BPP allows regional carriers to instruct the LECs to direct out-of-region traffic to specific IXCs - similar to the principle behind 800-number portability.

Furthermore, though the industry is sharply divided on BPP and obviously motivated in large part by self-interest, industry participants are in agreement on some key issues regarding BPP. If the FCC resolves to implement BPP, despite the many compelling and diverse arguments against it, the Commission must carefully address each of these issues.

Cleartel agrees with Ameritech that all 50 state public service commissions must also implement BPP in substantially the same manner to provide for ubiquitous service to the American public. In addition, 0 dialed intraLATA calls must be covered to

ensure that the consumer confusions alleged by the FCC and sought to be eliminated by BPP do not get transferred to another forum.

Cleartel agrees with BPP proponents Pacific Bell and Nevada Bell that full balloting is necessary. Some BPP proponents have urged the Commission to require full balloting as the only fair and efficient method of allocating consumers to carriers,<sup>6</sup> and others contend that full balloting is too costly and will be too confusing for consumers.<sup>7</sup> Full balloting is the only way to achieve the FCC's stated objective of encouraging all IXC/OSPs to compete for end user business.

The Commission must require 14-digit screening - it is the only way to ensure a level playing field. Even the proposals of Pacific Bell and Southwestern Bell regarding the LEC/IXC shared use card<sup>8</sup> fail to adequately address the needs of other IXCs. They propose to issue a card with one consumer-chosen LEC and one consumer-chosen IXC sharing the same line and pin numbers. While this might be viable in a world where only one IXC exists in any region, it fails to accommodate the numerous IXCs participating in the industry. For example, if a consumer wishes to change his IXC, is the card's IXC logo changed and the consumer issued a new card?

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<sup>6</sup> Pacific Bell and Nevada Bell Comments, p. 6 and Southwestern Bell Telephone Comments, pp. ii, 8.

<sup>7</sup> Sprint Comments, p. 44 and Ameritech Comments, p. 15.

<sup>8</sup> Pacific Bell Comments, p. 5 and Southwestern Bell Comments, p. 11.

If so, who is responsible for the cost of reprinting that card? Also, 14-digit screening is necessary to afford the convenience of a variety of calling card options and viable commercial credit card dialing to consumers.

#### **V. FCC SHOULD FOCUS ON ALTERNATIVES**

For those who view BPP as a flawed proposal, the alternatives presented by various commenters should be seriously considered.

As APCC has suggested, if BPP is so highly valuable and consumers likely to pay for the convenience of the service, the LECs which support this proposal should be interested in marketing BPP without an FCC mandate. In fact, however, the LECs and RBOCs are deeply divided over whether BPP is in their self-interest. Very obviously, no LEC or RBOC would be willing to entertain BPP if it did not believe that it could significantly increase market share at the expense of existing operator service providers, such as Cleartel.

If the Commission's goal is to ensure reasonable consumer rates, Cleartel would support the expansion of the current "safe harbor" rates created by the Commission or the setting of target rates for IXC/OSPs.

#### **VI. CONCLUSION**

Given the high stakes involved in BPP, it is likely that the Commission will still be embroiled in litigation when the implementation dates for BPP have come and gone. Since 1988, consumers who routinely use away-from-home telephones have been educated in methods of dialing their preferred carriers. In its

BPP proceeding, the FCC would support introducing a brand new system that, instead of easing the purported consumer confusion and inconvenience, would create it anew. And then make the consumers bear the cost.

For the foregoing reasons, Cleartel strongly urges the Commission not to require billed party preference.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Regina LaCroix", written over a horizontal line.

Regina A. LaCroix  
Director of Regulatory Affairs  
**CLEARTEL COMMUNICATIONS, INC.**

Dated: September 14, 1994